



ESEA Information Update

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Topic: Access by Military Recruiters

Under the general provisions in Title IX of the recently reauthorized federal Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind (NCLB) Act of 2001, local education agencies (LEAs) receiving funds under this act shall provide armed forces recruiters access to students and student recruiting information.

Student Recruiting Information

LEAs shall provide, upon a request by military recruiters or an institution of higher education, access to high school student names, addresses, and telephone listings, referred to as directory data under s. 118.125, Wis. Stat. A high school student or the parent of the student may request that this information not be released without written parental consent. LEAs are required to notify parents of this option and shall comply with any request.

In essence, if a military recruiter asks for the names, addresses, and telephone listing of high school students, that information must be provided by the school officials except in the following circumstances:

- The school is a private school and maintains a religious objection to service in the armed forces that is verifiable through information or materials of the school.
- The school has afforded parents the opportunity to opt out of providing this information to third parties, and the parents opted out.

Access to Students

LEAs shall provide military recruiters the same access to high school students as is provided generally to postsecondary educational institutions or to prospective employers of those students.

Following are questions and answers developed by the U.S. Department of Education concerning this provision and a Family Educational Rights and Privacy Act (FERPA) Model Notice for Directory Information for parents.

October 9, 2002

Access to High School Students and Information on Students by Military Recruiters

What are the recent changes made by Congress concerning military recruitment of high school students?

Congress has passed two major pieces of legislation that generally require local educational agencies (LEAs) receiving assistance under the *Elementary and Secondary Education Act of 1965* (If the LEA receives funds under the ESEA, all the secondary schools in that LEA are subject to the requirements in these laws.) to give military recruiters the same access to secondary school students as they provide to postsecondary institutions or to prospective employers. LEAs are also generally required to provide students' names, addresses, and telephone listings to military recruiters, when requested.

Where are these statutory requirements found?

These requirements are contained in § 9528 of the ESEA (20 U.S.C. § 7908), as amended by the *No Child Left Behind Act of 2001* (P.L. No. 107-110), the education bill Congress recently passed.

These requirements are also contained in 10 U.S.C. § 503, as amended by § 544 of the *National Defense Authorization Act for Fiscal Year 2002* (P.L. No. 107-107), the legislation that provides funding for the nation's armed forces in fiscal year 2002.

What is the effective date for these military recruiter access requirements?

While there are differences in the effective date provisions for 10 U.S.C. § 503 and § 9528 of the ESEA, both provisions apply to all LEAs receiving ESEA funds by not later than July 1, 2002.

What are the requirements of § 9528 of the ESEA?

Each LEA that receives funds under the ESEA must comply with a request by a military recruiter or an institution of higher education for secondary students' names, addresses, and telephone numbers, unless a parent has "opted out" of providing such information. (See below for additional information.)

Section 9528 also requires LEAs that receive funds under the ESEA to provide military recruiters the same access to secondary school students as they generally provide to postsecondary institutions or prospective employers. For example, if the school has a policy of allowing postsecondary institutions or prospective employers to come on school property to provide information to students about educational or professional opportunities, it must afford the same access to military recruiters.

Under § 9528 of the ESEA, what notification must LEAs provide to parents before disclosing names, addresses, and telephone numbers of secondary students to military recruiters and officials of institutions of higher education?

Under FERPA, an LEA must provide notice to parents of the types of student information that it releases publicly. This type of student information, commonly referred to as "directory information," includes such items as names, addresses, and telephone numbers and is information generally not considered harmful or an invasion of privacy if disclosed. The notice must include an explanation of a parent's right to request that the information not be disclosed without prior written consent. Additionally, § 9528 requires that parents be notified that the school routinely discloses names, addresses, and telephone numbers to military recruiters upon request, subject to a parent's request not to disclose such information without written consent. A single notice provided through a mailing, student handbook, or other method that is reasonably calculated to inform parents of the above information is sufficient to satisfy the parental notification requirements of both FERPA and § 9528. The notification must advise the parent of how to opt out of the public, nonconsensual disclosure of directory information and the method and timeline within which to do so.

If an LEA has not provided notice relating to "directory information," may it release a student's name, address, and telephone number when requested by a military recruiter?

As noted above, an LEA may provide a single notice regarding both directory information and information disclosed to military recruiters. If an LEA does not disclose "directory information" under FERPA, then it must still provide military recruiters access to secondary students' names, addresses, and telephone listings. In addition, the LEA must notify parents that they may opt out of this disclosure. In other words, an LEA that does not disclose "directory information" must nonetheless provide a notice that it discloses information to military recruiters. The notice must be reasonably calculated to inform parents.

If a parent opts out of the public, nonconsensual disclosure of directory information (or any subset of such information), must the three data elements be released to military recruiters upon their request?

If a parent opts out of providing directory information to third parties, the opt-out relating to name, address, or telephone number applies to requests from military recruiters as well. For example, if the opt-out states that telephone numbers will not be disclosed to the public, schools may not disclose telephone numbers to military recruiters.

If the school does not list one or more of the three data elements (e.g., telephone number) among its directory information, may it release that information to military recruiters?

If a school does not designate one or more of the three items as "directory information" under FERPA, it still must provide all three items to military recruiters upon request. Also, in that case, the school would have to send a separate notice to parents about the missing "directory information" item(s), noting an opportunity to opt out of disclosure of the information to military recruiters. An easier method, of course, would be for the school to designate all three items -- name, address, and telephone listing -- as "directory information."

How are the requirements under § 9528 of the ESEA enforced?

Schools that do not comply with § 9528 of the ESEA could jeopardize their receipt of ESEA funds.

How does § 544 of the National Defense Authorization Act for Fiscal Year 2002 amend the former requirements under 10 U.S.C. § 503?

Section 544 of the *National Defense Authorization Act for Fiscal Year 2002* revises Title 10, Section 503(c) in several important ways. First, the recruiting provisions now apply only to LEAs (including private secondary schools) that receive funds under the ESEA. Second, these provisions now require access by military recruiters to students, under certain conditions, and to secondary school students' names, addresses, and telephone listings. Third, as discussed earlier, they require LEAs to notify parents of their right to opt out of the disclosure of their children's names, addresses, and telephone numbers and to comply with any such requests from the parents or the students.

How are these requirements under 10 U.S.C. § 503 enforced?

In addition to the potential for loss of funds under ESEA noted above for failure to comply with § 9528 of the ESEA, an LEA that denies a military recruiter access to the requested information on students after July 1, 2002, will be subject to specific interventions under 10 U.S.C. § 503.

In this regard, the law requires that a senior military officer (e.g., Colonel or Navy Captain) visit the LEA within 120 days. If the access problem is not resolved with the LEA, the Department of Defense must notify the State Governor within 60 days. Problems still unresolved after one year are reported to Congress if the Secretary of Defense determines that the LEA denies recruiting access to at least two of the armed forces (Army, Navy, Marine Corps, etc.). The expectation is that public officials will work with the LEA to resolve the problem.

Additionally, the Department of Defense has developed a national high school database to document recruiter access. Presently, 95 percent of the nation's 22,000 secondary schools provide a degree of access to military recruiters that is consistent with current law.

Are private schools subject to the military recruiter requirements?

Private secondary schools that receive funds under the ESEA are subject to 10 U.S.C. § 503. However, private schools that maintain a religious objection to service in the Armed Forces that is verifiable through the corporate or other organizational documents or materials of that school are not required to comply with this law.

Where can I get more information on the requirements of 10 U.S.C. § 503?

The Office of the Secretary of Defense may be contacted for copies of the statute, or questions relating to it. Please contact the Accession Policy Directorate as follows:

Director, Accession Policy
4000 Defense Pentagon
Washington, DC 20301-4000
Telephone: (703) 695-5529

Where can I get more information on the requirements of § 9528 of the ESEA?

The Family Policy Compliance Office (FPCO) in the Department of Education administers FERPA as well as § 9528 of the ESEA, as amended by the *No Child Left Behind Act of 2001*. School officials with questions on this guidance, or FERPA, may contact the FPCO at FERPA@ED.Gov or write to the FPCO as follows:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605
Telephone: (202) 260-3887
Fax: (202) 260-9001
www.ed.gov/offices/OM/fpc

A model "directory information" notification for use by LEAs incorporating the changes under § 9528 of the ESEA and 10 U.S.C. § 503 is attached. The model notification may also be obtained on the FPCO's website.

Family Educational Rights and Privacy Act (FERPA) Model Notice for Directory Information

The *Family Educational Rights and Privacy Act* (FERPA), a Federal law, requires that [School District], with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, [School District] may disclose appropriately designated "directory information" without written consent, unless you have advised the District to the contrary in accordance with District procedures. The primary purpose of directory information is to allow the [School District] to include this type of information from your child's education records in certain school publications. Examples include:

- A playbill, showing your student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports activity sheets, such as for wrestling, showing weight and height of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the *Elementary and Secondary Education Act of 1965* (ESEA) to provide military recruiters, upon request, with three directory information categories - names, addresses and telephone listings - unless parents have advised the LEA that they do not want their student's information disclosed without their prior written consent. (These laws are: Section 9528 of the ESEA (20 U.S.C. 7908), as amended by the *No Child Left Behind Act of 2001* (P.L. 107-110), the education bill, and 10 U.S.C. 503, as amended by section 544, the *National Defense Authorization Act for Fiscal Year 2002* (P.L. 107-107), the legislation that provides funding for the Nation's armed forces.)

If you do not want **[School District]** to disclose directory information from your child's education records without your prior written consent, you must notify the District in writing by **[insert date]**. **[School District]** has designated the following information as directory information: **[Note: an LEA may, but does not have to, include all the information listed below.]**

- Student's name
- Address
- Telephone listing
- Electronic mail address
- Photograph
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- Date and place of birth
- Major field of study
- The most recent educational agency or institution
- Dates of attendance
- Grade level attended